Kenosha Auto Transport Corporation *and* General Teamsters, Sales & Services and Industrial Union, Local No. 654, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO. Cases 9–CA–26613 and 9–CA–26990

May 10, 1991

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On September 13, 1990, Administrative Law Judge Frank H. Itkin issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this roceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.

We adopt the judge's conclusion that the Respondent violated Section 8(a)(5) and (1) of the Act on the following basis. On July 6, 1989, a dispute arose between the Respondent and the Union over the number of trucks that employees would have to ''deck'' (prepare for transport) per day. As more fully described by the judge, the issue was first discussed among Union Steward Donald Williams, Union Committeeman Sam Herrin, and Terminal Manager Jim Burgel. Williams telephoned Union Secretary-Treasurer Roy Atha, who agreed to come to the plant to discuss the problem with Burgel and the employees. Burgel was informed of Atha's intentions. That afternoon, Williams, Burgel, and various employees discussed the dispute in the lunchroom. Atha arrived during this discussion, in which he took part. The dispute was resolved later that afternoon by and during a telephone conversation among Burgel, Corporate Officer Gordon Birdsall, Herrin, and employee Gary Routzahn.

Because union committeeman Herrin participated in the telephone conversation that resolved the dispute, we do not, as did the judge, find that the Respondent engaged in ''direct dealing'' with employees. Indeed, the judge did not find, and we agree, that Burgel's discussion with Williams and other employees in the lunchroom violated the Act. Rather, and more precisely, the Respondent violated Section 8(a)(5) by failing to deal with the Union's chosen representatives—Atha and Williams—in resolving the dispute. See *Columbia Portland Cement Co.*, 294 NLRB 410 (1989); *Arizona Portland Cement Co.*, 281 NLRB 304, 306–307 (1986); *Native Textiles*, 246 NLRB 228, 229 (1979). We will modify the recommended Order and notice accordingly.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Kenosha Auto Transport Corporation, Springfield, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(c).

''(c) Failing to bargain in good faith with the Union as the exclusive bargaining agent of its employees in the following appropriate unit by failing to allow the Union's chosen representatives to be present during a discussion concerning the number of trucks which had to be loaded per day by the unit employees. The appropriate unit is:

> ''The employees of Respondent described in the National Master Automobile Transportation Agreement of 1988, including all drivers, yard employees, garage employees and mounting and hookup employees, but excluding all professional employees, guards and supervisors as defined in the Act.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

[1] The Respondent has excepted to the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In adopting the judge's conclusion that the 8(a)(5) allegation should not be deferred to arbitration, we note that the allegation, although cast in terms of ''direct dealing,'' is in reality an allegation of a refusal to deal with the Union's chosen representatives. In our view, the right to bargain through a chosen representative is a basic principle of collective bargaining, and hence we agree with the judge that a refusal to honor that right is a rejection of the principles of collective bargaining. In addition, the Board has held, in determining whether to defer an 8(a)(5) allegation, that it will consider whether there is a claim of employer animosity to the employees' exercise of protected rights. *E. I. duPont & Co.*, 293 NLRB 896, 897 (1989). In this case, there are such claims—the alleged violations of Sec. 8(a)(3) and (1) of the Act.

The judge concluded that the Respondent violated Sec. 8(a)(3) and (1) of the Act by granting a raise to office employee Robin Hensley, and that the Respondent violated Sec. 8(a)(1) of the Act by granting a raise to two other office employees. The Respondent has excepted to these conclusions. We adopt the judge's conclusion with respect to Hensley, but we find it unnecessary to decide whether the raises granted the other two office employees violated Sec. 8(a)(1) of the Act. The additional findings, and the remedy therefor, would be cumulative.

WE WILL NOT threaten our office employees with layoff and more onerous working conditions if they select General Teamsters, Sales & Services and Industrial Union, Local No. 654, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO as their collective-bargaining agent or grant our office workers a pay raise during the Union's organizational campaign.

WE WILL NOT discriminatorily grant a pay increase to and lay off our employees in an attempt to discourage them from engaging in protected union activities.

WE WILL NOT fail to bargain in good faith with the Union as the exclusive bargaining agent of our employees in the following appropriate unit by failing to allow the Union's chosen representatives to be present during a discussion concerning the number of trucks which had to be loaded per day by the unit employees. The appropriate unit is:

> Our employees described in the National Master Automobile Transportation Agreement of 1988, including all drivers, yard employees, garage employees and mounting and hookup employees, but excluding all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer employee Therese Langen immediate and full reinstatement to her former job or in the event her former job no longer exists to a substantially equivalent job without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings she may have suffered by reason of her layoff, with interest.

WE WILL remove from our files any reference to the disciplinary layoff of employee Langen and notify her in writing that this has been done and that evidence of this unlawful action will not be used as a basis for future personnel action against her.

WE WILL on request bargain in good faith with the Union as the exclusive bargaining agent of our employees in the above appropriate unit and meet and bargain, on request, with the Union's chosen representatives for processing and resolving employee grievances.

KENOSHA AUTO TRANSPORT CORPORATION

Mark G. Mehas, Esq., for the General Counsel.
C. John Holmquist, Esq., for the Employer.
William Puncer, Esq., for the Union.

DECISION

FRANK H. ITKIN, Administrative Law Judge. Unfair labor practice charges were filed in the above cases on July 7 and November 13, 1989. A consolidated complaint issued on December 27, 1989. Charging Party Union represents a bargaining unit consisting of Respondent Employer's drivers, yard employees, garage employees and hookup employees at its truck shipment preparation facility in Springfield, Ohio. The Employer and Union have entered into successive collective-bargaining agreements since about 1979, the most recent agreement being effective from June 1, 1988 through May 31, 1991. General Counsel alleges that the Employer unlawfully bypassed the Union and dealt directly with its unit employees by refusing to allow a union representative to be present during a discussion concerning the number of trucks which had to be loaded per day by unit employees, in violation of Section 8(a)(5) and (1) of the National Labor Relations Act. In addition, the Employer's office employees at its Springfield facility were unrepresented. General Counsel alleges that the Employer, in response to an attempt to obtain union representation for the office employees, threatened employees with layoff and more onerous working conditions if they selected the Union as their collective-bargaining agent, in violation of Section 8(a)(1) of the Act. Further, General Counsel alleges that the Employer also discriminatorily granted a pay increase to three of its office employees and later laid off office employee Therese Langen in an attempt to discourage employees from engaging in protected union activities, in violation of Section 8(a)(3) and (1) of the Act. Respondent Employer denies violating the Act as alleged. Respondent Employer also avers that the ''underlying facts which have given rise to the initial complaint are subject to resolution under the contractual grievance and arbitration procedure . . . and any action by the Board should be deferred . . . .''

A hearing was held on the issues raised on April 5, 1990, in Springfield, Ohio, and on the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

A. *The Evidence Pertaining to the 8(a)(5) Allegations*

Respondent is an Employer engaged in commerce and the Union is a labor organization as alleged. The Union is the exclusive bargaining agent of an appropriate unit of Respondent's truck shipment preparation employees at its Springfield facility as alleged. The term of the current collective-bargaining contract between the parties, as noted, runs through May 31, 1991. (See R. Exh. 1.) In addition, on March 17, 1989, the parties entered into a local agreement (G.C. Exh. 8) which provides, inter alia, for incentive pay for yard unit employees who deck or prepare for transportation more than six trucks each day. The agreement states:

> After the incentive employees have decked six (6) trucks they may go home provided they have worked a minimum of six (6) hours, except for unusual heavy inventory or emergencies.

Donald Williams is employed by Respondent at the Springfield facility as a yard hand in the decking shed. He was also the Union's shop steward during the events in issue here. He explained that Navistar

> make[s] the trucks over there [on their property], they bring them across the street, and we prepare these

> trucks on the decking lines [for piggyback] . . . transportation across the country and delivery to specific dealers.

He further explained that under the local agreement (G.C. Exh. 8) ''if you deck more than six trucks . . . you get paid . . . $20 . . . each additional truck.'' He also noted, however, that Navistar ''shuts down'' each summer and as ''trucks begin to deplete in the yard they [Respondent Employer] start laying off the workers according to seniority . . . .''

The summer ''shutdown,'' according to Williams, started during the last week of June and first week of July 1989. Williams testified:

> The first part of the shutdown . . . they may have decked more than six trucks . . . . By the end of the first week . . . we dropped back to six trucks . . . . [I]f we continued to deck the trucks the way we had been we probably would have run ourselves out of work and then we would have been laid off.

In addition, on July 6, as Williams further testified:

> [I]t had been brought to my attention that the Company wanted us to deck more than we had agreed upon . . . . They wanted us to go over six trucks a man . . . . [W]e wanted to maintain what we had agreed upon which is six trucks a man to preserve everybody's job as long as possible.

Union Steward Williams, accompanied by committeeman Sam Herrin, met with Terminal Manager Jim Burgel during the morning of July 6 to discuss the potential ''problem'' arising from requiring the unit workers to deck more than six trucks. Herrin then stated to Burgel that ''we did not feel that there was a sufficient amount of trucks for us to deck more than six trucks a man . . . the men felt like they all wanted to stick together . . . and preserve our jobs as long as possible . . . we were just going to deck six trucks a man which had already been signed in the agreement and we were willing to stick by that agreement.'' Burgel replied: ''he wanted us to deck more than six trucks and the Company would not accept anything less than that.'' Burgel, however, agreed ''to come down and speak with the men and try to work something out'' ''at lunch break'' later that day. In the meantime, Williams was informed that if any of the unit employees ''tried to leave'' without decking more than six trucks ''they were going to be fired.'' Assistant Terminal Manager Dan Spitzer confirmed this information to Williams.

Williams then telephoned the Union hall and spoke with Union Secretary-Treasurer Roy Atha. Atha agreed to attend the meeting with Burgel and the employees scheduled for the ''lunch break.'' Later that day, Burgel came down to the employees' lunch room to speak with the workers. Burgel ''had gotten there a few minutes early'' before Atha ''showed up.'' Burgel ''was told that ''there would be some representative from the Union hall down there'' ''shortly'' and asked ''to wait.'' Burgel replied ''fine, when they get here we'll see what we can work out.'' Burgel nevertheless proceeded with the meeting before Atha showed up. Burgel told the employees that ''the Company could not accept anybody leaving . . . unless they decked more than six trucks a man.'' A discussion ensued and questions were asked. Atha then showed up and was permitted to attend and participate in this meeting. Atha showed Burgel the ''incentive agreement'' and explained that ''he did not feel the Company had a legitimate gripe . . . Navistar was on shut-down . . . substantiating all the things that had been said to Burgel of why we shouldn't stay and deck more trucks.'' Burgel then announced that he had ''to go upstairs and . . . try to get ahold of Gordon'' Birdsall, an officer of Respondent who was located in Kenosha, Wisconsin.

Williams, Herrin, and Atha waited to hear from Burgel. After a period of time, the three went ''upstairs'' to Burgel's office. Atha was then told that he had a telephone call and the three went into a side office where Atha took the call. Herrin, however, then walked into Burgel's office. Williams, as he testified,

> walked out in the hallway and looked over and seen Jim Burgel standing there with the door half open . . . and Sam Herrin in there starting to take the telephone in his hand . . . and so at that time I [Williams] started to go towards the door to open the door, and Burgel's standing there and he Burgel] says, ''Gordon [Birdsall does not want you [Williams] in here, he wants you to go downstairs and get [employee] Gary Routzahn, he wants to speak to Sam [Herrin] and Gary [Routzahn].

Williams, a steward, noted that Herrin was only his committeeman and Routzahn was only a rank-and-file member.

Williams thereupon went back to Atha and told him ''what was going on.'' Atha, having finished his telephone call, immediately attempted to participate in the meeting in Burgel's office. Atha and Williams could not get into Burgel's office because the door had been locked. Atha, repeatedly knocked on the door to Burgel's office without any response. Atha and Williams ''sat there outside the office.'' Finally, Herrin and Routzahn came out and announced that the employees did not have to deck more than six trucks and ''Gordon [Birdsall] said it's okay for everybody to leave.'' According to Williams, management had negotiated a settlement of the Union's grievance or complaint with a committeeman and rank-and-file member and precluded the steward and secretary-treasurer of the Union from being present during this meeting. Atha then telephoned Todd Barnum, the Employer's representative in Kenosha, to complain and ''inform him that [Atha] was going to take further action.''

Roy Atha, the Union's secretary treasurer, testified that on the day in question he had been notified by his Steward Williams that the Employer ''was trying to make them do . . . more work . . . that was not what the agreement was''; that he agreed to then go to the terminal; that when he arrived there the meeting was in progress; that he ultimately asked Burgel if he could speak privately with the employee members; that Burgel agreed and ''went upstairs''; that he too later went upstairs to meet with Burgel; that he stopped to take a telephone call; and that

> when I [Atha] finished with the phone call . . . Williams says . . . ''well he's [Burgel] took Routzahn and Herrin into the office [and] . . . Routzahn told me [Williams] I'm not going in there without Roy coming in.''

Atha then went to the door of Burgel's office and repeatedly knocked on the door and attempted to push it open without any response. Atha also telephoned Todd, the Employer's official in Kenosha, to complain that Burgel had ''locked [him] out of the office.'' Atha explained:

> I felt they wasn't allowing me the right to represent my people and to be in the room with them . . . I'd been at many meetings in that office . . . and the door was never locked before.

Gary Routzahn testified that he is employed by Respondent as a decker at Springfield and holds no position with the Union; that on July 6 he attended a meeting in the break room where Burgel ''wanted us to deck eight trucks a man instead of six . . . ''; that Atha showed up after the meeting had started; that Burgel left the meeting and went upstairs; and that later Burgel

> came down . . . and asked me to come upstairs . . . Gordon Birdsall was on the telephone [and] wanted to talk to us . . . . I told him I'd go in [the office] when Roy [Atha] got off the phone. . . . He said . . . Roy will be off the phone in a minute, just go into the office.

Burgel ''closed and locked the door.'' Herrin and Roger Crum, a company representative, were also in the office and there was in progress an open speaker telephone conversation with Birdsall. Birdsall then announced that ''he was in agreement with our [the Union's] stand, . . . [due] to low inventory . . . all we had to do was six trucks a man.'' During this meeting, Routzahn heard knocks on the door but Burgel did not open the door.

Gordon Birdsall, executive vice president for Respondent Employer, testified that on July 6 Union Representatives Roy Atha and Harry Geesic had telephoned him and assertedly had complained to him that the ''Sam Herrin-Gary Routzahn group [had] disqualified a driver'' at the Springfield facility and they ''don't think it's right.'' According to Birdsall, these union representatives were complaining to him that they ''don't think it's right that . . . the Union group should be disqualifying other drivers coming in to work on their line.'' Birdsall agreed to ''correct the situation.''

Birdsall, as he further testified, then telephoned Burgel at Springfield to ''correct'' this ''situation.'' Burgel, in this telephone conversation, told Birdsall about his ''problem'' as a result of his attempt to require the employees to deck more than six trucks per man. Birdsall, after a brief discussion, apprised Burgel that ''I agree with the guys in the yard.'' Birdsall then instructed Burgel ''to bring'' Sam Herrin and Gary Routzahn ''on the phone.'' After Burgel had Herrin and Routzahn on the telephone, Birdsall then apprised the two that they ''can't disqualify people'' or ''drivers.'' Birdsall also told the two that he ''agree[d] with [their] position'' about not decking more than six trucks per man. Birdsall asserted that ''if I'd known that [Roy Atha] was outside I'd have invited him in.''

Roger Crum, the Employer's director of operations and previously assistant to the executive vice president, testified that on July 6 ''Roy Atha showed up'' at Springfield ''and was representing the men in terms of a dispute as to whether or not they should deck six trucks per man or eight trucks per man''; that he, Crum, was later present when ''Birdsall talked'' on the telephone to Burgel, Herrin and Routzahn in Burgel's ''locked'' office; that Birdsall previously had instructed Burgel to ''get'' Herrin and Routzahn in the office; that Birdsall then told Nerrin and Routzahn that they ''cannot disqualify a driver''; and that Birdsall also apprised Herrin and Routzahn that he, Birdsall, agreed that the employees did not have to deck more than six trucks per man. Crum was aware that Union Secretary-Treasurer Atha was then ''downstairs'' ''to discuss the particular problem'' about decking more than six trucks. Crum was also aware that Union Steward Williams ''was out there.'' No effort was made to get these ''higher ranking Union officials'' into the office. In fact, Burgel and Crum ignored knocks on the door and efforts of someone to get into the office.

Springfield Terminal Manager Jim Burgel testified that on July 6 he summoned Herrin and Routzahn to his office to talk to Birdsall on the telephone; that his door was ''locked'' during this telephone discussion; that Routzahn had said ''I [Routzahn] want Roy [Atha] to go with me''; that Atha ''was in the adjoining office on the telephone'' at the time; that he did hear a knock on the door during this telephone discussion; and that he refused to open his door. Burgel claimed that ''I never open my door when somebody knocks . . . .''

B. *The evidence Pertaining to the 8(a)(1) and (3) allegations*

The Employer's Springfield office employees, as noted, were unrepresented. On June 30, 1989, the Union wrote the Employer stating that it ''has the majority of the Kenosha Auto office employees signed up'' and requested that the Employer comply with its regional contract. Thereafter, on July 6, the Union filed a representation petition with the Board seeking to represent all full time and regular part time office employees at the Springfield facility. A Board-conducted representation election was held on August 29 and, of approximately ten eligible voters, seven votes were cast for and three votes were cast against the Union. Certification issued on September 14. (See G.C. Exhs. 2 through 5.)

Therese Langen testified that she started working at the Employer's facility during October 1988 as a ''temporary'' from Manpower Temporary Services; she later became a regular full-time office employee of Respondent on April 4, 1989; and she ''mainly did payroll for the drivers.'' She subsequently became active in a campaign to have the ten office employees represented by the Union. She discussed the Union with other personnel; passed out Union membership cards to her coworkers; and signed a card herself. These activities principally took place ''in the back office'' during late June 1989.

Langen recalled that, subsequently, about early July, each of the ten office employees was separately called into ''the office in the front'' to meet with the Employer's human relations representative Cy Phippen and Terminal Manager Jim Burgel. Phippen then ''stated what he liked and disliked about Unions'' and asked Langen ''if there were any problems he might adjust.'' She replied ''no.'' Later, on the day before the election, as Langen further testified,

> [Management official] Gordon Birdsall came in from Kenosha and he was talking about the Union and told

> us there was layoffs and such across the street at Navistar. [W]e drive—haul away their trucks. And [he] said if there was a slow down there, there would likely . . . be a slow down with Kenosha . . . there would probably be layoffs, either between one to two girls most likely. And he was talking about things which he didn't like about the Union.

Langen noted that earlier that same day Birdsall ''went around'' the facility and ''gave little comments to everybody.'' Birdsall then

> looked at [Langen] and told [her]—like he knew [she] had signed a card, told [her] [she] was stupid for signing a card.

The representation election was held on August 29 and certification issued on September 14. On October 16, Terminal Manager Burgel called Langen to his office. Burgel told Langen that there ''was a slow down [in] productivity'' and she was laid off. Langen acknowledged that she was the least senior office employee; however, she noted that Jennifer Bail, ''a temporary employee with Manpower Services,'' ''continued to work.'' Langen claimed that she ''probably could have done'' the work performed by Bail. Further, Langen also noted that prior to her layoff she had worked 40-hour workweeks with about 4 hours of overtime on Saturdays.

Robin Hensley has been employed by Respondent as an office clerical for over 9 years. Hensley testified that on Saturday June 24, 1989, coworker Langen ''approached'' her at work and ''told [her] that they were signing [Union] cards in the back room.'' Hensley did not ''go back there'' because her previous manager, Gerald Winters, had warned her some time earlier that ''he didn't ever want to catch [her] discussing a Union again.'' Hensley instead ''reacted out of fear'' on June 24 and ''informed'' Terminal Manager Burgel ''that there were Union cards . . . around'' and she ''did not want to get in trouble for it.'' She identified ''some'' of the employees involved to Burgel. She ''believe[d]'' that she then ''mention[ed]'' Langen's name.

Two days later, on Monday June 26, Hensley was summoned to a meeting with Burgel and Phippen in Burgel's office. All the office workers were ''called in one at a time'' to similar meetings. Phippen then stated to Hensley that ''going Union would not be a good idea''; that Hensley ''did a wonderful job''; and that Hensley would receive a pay raise of over $1 an hour. Phippen also stated that ''he appreciated [Hensley's] effort'' in informing on her coworkers' union activities. The last time Hensley had received a raise was in February 1989 for $.30 an hour, and her last raise for over a dollar an hour was in 1984.

Hensley testified that on August 28, the day before the representation election, Birdsall and Phippen conducted meetings with the assembled office employees, as follows:

> He [Birdsall] said he wanted to discuss with us the reasons why he felt in his opinion a labor Union would not be to our best interest. Because, in the past, we had not had to deal with being laid off during shutdowns or slowdowns. But, if we was to go to the Union, he would at that time have to start addressing layoffs. He also informed us that if we did go Union at least one or two jobs would be done away with because they would have to adjust for compensation that they would lose, they couldn't [afford] to absorb it without passing it on . . . . And he said that he would appreciate a no vote . . . because then they could address all our problems and complaints without a third party involved. And he said he wanted us to take a look at the west coast, because we had terminals out there that was unionized and they only had two girls to handle the same amount of drivers as what we had. And he also had always looked upon us as an extension of Management. And if we decided to go Union, he would no longer look at us in this manner. And he also said that he wanted us to take into consideration that in the past we've always written in our time, kept our own time on time cards, and we had not had to punch in and out on a time clock. But, if we went Union . . . we would have to go to using a time clock.

Hensley testified that there are ''normally slow periods'' about ''two times a year'' when Navistar is ''shut down''; however, none of the office clerical employees have ''ever been laid off during those slow periods.''[1] Hensley recalled that when Langen was laid off on October 16, ''about everybody except [herself] was working some overtime [during] the week'' and on Saturdays. Hensley did not work overtime during the week because she had another job. Hensley added: ''Before the Union went in . . . everybody worked on Saturdays.'' Moreover, ''all overtime'' did not stop when Langen was laid off; it ''was some time after [Langen] was laid off that we were told or certain people in the office was told not to work any more overtime.'' Hensley nevertheless has continued to work Saturday overtime ''nonstop'' since the layoff of Langen. And, a ''temporary'' from Manpower has continued to work at the facility.

Gail Johnson has been employed by Respondent for 15 years as an office worker. Johnson testified that on the day before the representation election Birdsall spoke to the ''office girls,'' as follows:

> he [Birdsall] hoped we would vote yes for the Company and no for the Union . . . if the office did go Union there would be layoffs . . . whereas in the past he had worked us during slow periods and shutdowns . . . he would have to lay off . . . .

Johnson also testified that Jennifer Bail, a ''temporary'' from Manpower, ''was brought in to assist her with the ''Navistar Computer System''; however, Johnson believed that Bail also ''did work'' for the Terminal Manager and Langen ''is capable of [performing] that'' work. Further, before Langen's layoff on October 16, ''just about everyone'' had worked overtime, and ''after the layoff ''we still worked overtime.'' Johnson added that operations slowed down about twice a year when ''the Navistar people shut down for vacations''; ''it was slowing'' when Langen was laid off; and in the past there had not been any layoffs of office personnel which she could recall ''as a result'' of such slowdowns.

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[1] Hensley recalled that during her 9 years of employment she had only been laid off once in 1982 because of rather unusual economic circumstances. International Harvester, predecessor to Navistar, was then ''virtually bankrupt''; ''we were very slow at the time''; ''I had sat with maybe two to three hours of work a day for two to three months before I was finally laid off'' for 9 months.

Kay Mammolite is Respondent Employer's Springfield office manager. Mammolite testified that she attended the meeting of office workers conducted by the Employer the day before the representation election. According to Mammolite, Birdsall ''just said that he was sorry that this had to happen''; ''he was just really discussing the business aspect of the Company, that Navistar is our main source of income and if Navistar's business goes down so does ours.'' Elsewhere, she generally denied ''any discussion'' ''about layoffs''; ''time clocks''; or ''the elimination or reduction of jobs.''

Mammolite further testified that office employee Langen ''did all the check-in [work] for the drivers'' prior to her ''layoff'' in October; ''she might have also called in plane reservations or something''; and ''she did fill in for [office employee] Nancy [Insley] once . . . input[ing] information for payroll into the computer.'' Mammolite next claimed that the ''Manpower person'' also working at the Springfield facility during October ''was paid by Harvester'' because she was working on their computer system. Mammolite, however, would ''pay'' '' Manpower'' and then ''invoice Harvester'' or Navistar. Mammolite further identified Respondent's Exhibit 2 as a compendium of the overtime worked by the office employees during 1989 and early 1990. Mammolite acknowledged that there was overtime ''Saturday dispatch'' ''all the way through 1989.'' Mammolite claimed that not all of the office employees ''work on Saturdays''; ''the people with the most seniority have the opportunity to work Saturday.'' I note that Respondent's Exhibit 2 shows that, following Langen's ''layoff'', all nine of the remaining office personnel worked some overtime. I note further that Langen worked overtime up to her ''layoff.''

Nancy Insley is employed by Respondent at Springfield as payroll clerk. She explained her various duties and those of her coworkers. She claimed that Birdsall, during his talk with the employees before the representation election, ''told the girls that he would hate to see them go Union''; ''he didn't want a Union in there''; ''a Union office isn't no good.'' She generally denied that he ''threaten[ed] anybody''; however, she acknowledged that he did say ''the number of employees would be cut'' ''if business got bad'' ''as in past practice.'' Elsewhere, when asked to discuss layoffs in the past other than those caused by or related to Harvester International ''strikes,'' she cited a layoff in 1967. Then, she generally claimed that ''when drivers would be laid off office employees would get laid off.''

Hellen Cornell is also employed by Respondent at Springfield . She has worked there for 38 years performing ''just general office work.'' She too attended the meeting the day before the election. Birdsall told the employees, inter alia, that ''there would probably be layoffs.'' Elsewhere, she could not ''remember'' whether Birdsall ''mention[ed] whether his trip had anything to do with the election that was coming up'' or that the Employer's West Coast facilities were unionized. She denied that he mentioned the use of a ''time clock.'' She claimed that ''when Navistar's production goes down there is layoffs'' and she has been laid off. She was asked ''how long ago was that?'' She replied: ''I've been there a long time. So, it's been a long time since I've been laid off.''

Gordon Birdsall, executive vice president for Respondent Employer, testified that he spoke with the Springfield office employees shortly before the representation election. Burgel and Phippen were with Birdsall. Birdsall assertedly told the employees, inter alia, ''if you feel you want a Union to represent you that's fine . . . you can vote either way you want to.'' Birdsall claimed that ''somebody brought the subject'' of ''layoffs'' ''up'' and he responded that ''I don't know whether we will or not . . . if business goes down we will . . . if business goes up we'll hire people.'' Birdsall denied discussing ''time clocks'' and ''job elimination''; he assertedly would not ''threaten people.'' Birdsall denied having any conversation with Langen about her involvement in the Union campaign; however, he ''might have walked around to every office [and asked everybody how they was doing . . . .''

Birdsall next addressed the alleged pay raises given to three office employees during this time. According to Birdsall, early in 1989 the Employer ''did pass along a four and a half to five and a half percent increase straight across [the board] . . .''; this would amount to an hourly increase for the office workers of about 40 cents. After implementation of this increase, Burgel assertedly notified Birdsall that Hensley was ''dissatisfied'' with this ''increase.'' Birdsall had Phippen ''analyze that'' and report back. Phippen assertedly investigated the matter ''sometime in June or July'' 1989. Birdsall was ultimately notified that ''there were two or three people that were doing an excellent job and deserved a merit raise.'' Birdsall ''approved it.'' Birdsall was asked if he could ''recall when [he] approved it?'' He responded generally: ''probably at the time they [his representatives] came back and talked to me about it . . . .''

Birdsall next addressed Langen's layoff in October. Birdsall testified that ''up until July we were having a great year''; ''in July things started to fall to pieces''; ''we had people on layoff''; and he telephoned the various operations, including Springfield, and stated ''are you laying people off and if not why not because we are not going to make money at your terminal.'' Birdsall was asked when did his ''conversation'' with the Springfield facility take place and he responded:

> My guess would be in July and August and September, October, November, December, and it's still going on. In fact we have a Terminal Manager's meeting today which I should be at because we're loosing our shirt and our Company.

Birdsall then asserted that the ''reason'' for Langen's layoff in October was ''because we had over 25 percent of our drivers laid off . . . .'' (See R. Exhs. 3 and 4.) Birdsall explained the method by which Management made this determination, as follows:

> [W]e would have laid two people off, I remember the discussion on Therese and there was another one . . . I think it was Alberta, I'm not positive. . . . [The Springfield personnel] said . . . Alberta is in payroll . . . and the girl next to her does not know her job or we could probably lay her off, and I said I'd approve the layoff . . . .

Only Langen was laid off at the time . Birdsall noted that Manage ment continued to utilize a ''Manpower temporary'' at Springfield. He asserted that Navistar ''wanted a Man-

power girl in there'' working on the computer system and ''we don't argue with them.'' Birdsall added that he has recently been advised that ''we're getting busier'' and Langen has been sent a ''letter of recall.''

Roger Crum, the Employer's director of operations and previously assistant to the executive vice president, testified that Respoondent's Exhibit 5 shows the 1989 ''change of pay rate for salaried [office] employees'' at Springfield. Respondent's Exhibit 5 shows changes of rates for three of the Springfield office employees. In one instance, the rate change is purportedly ''effective'' on June 1 and in the two remaining instances the rate change is purportedly ''effective'' on June 16, 1989. Crum claimed that the so-called ''effective'' date means ''that's the date the pay increase is approved and that's the date from which it will be used.'' Crum added that ''no increases . . . are processed until they have been initialled by'' Birdsall; there is no date on Respondent's Exhibit 5 which would show when Birdsall initialed the raises; and, apparently, ''we wouldn't know when [the particular] employee[s] got their pay raise . . . .''

Springfield Terminal Manager Jim Burgel testified that he attended a meeting in August on ''the day before the election'' where Birdsall spoke to the office personnel, as follows:

> Mr. Birdsall was telling the girls . . . he knew they were having an election and that he would hope that they would be satisfied with what they had . . . that's all I remember.

Burgel next testified that he had numerous discussions with office employee Hensley about pay raises; Hensley was unhappy in February 1989 with her pay increase; he told her that he ''couldn't probably do anything for her for two or three months'' but he ''would see what [he] could do''; he ''got'' her a pay increase of over one dollar an hour in ''approximately June of 1989''; this raise was ''supposed to be effective June l''; and he was ''not sure when she got it . . . .'' [2] Elsewhere, Burgel acknowledged that Hensley ''came to me one time and said that they were signing cards to join the Union.'' Burgel claimed that Hensley did not then say ''who was signing cards.''

Burgel next testified that he handed employee Langen a copy of Respondent's Exhibit 6 advising the employee of her layoff. I note that Respondent's Exhibit 6 is an April 3, 1987 notice to another employee and recites: ''we have for some time had considerable questions as to whether you and your work are really compatible with our system.'' Burgel assertedly had previously been told by Birdsall that he had reduced his ''drivers'' and ''how come [he] hadn't reduced [his] office staff by at least two girls.'' Burgel thereafter continued to use the ''Manpower temporary'' to work on the Navistar computer program. He generally claimed that Langen ''wasn't qualified'' for that work. In addition, the Employer continued to work overtime with respect to the remaining office personnel.

[2] Hensley testified that shortly after receiving her February 1989 pay increase she expressed dissatisfaction to Burgel; Burgel then told her that he could not get her an additional raise; and she had no other discussions with Burgel concerning this subject until June 26, as recited above. See Tr. pp. 52 to 53.

I credit the testimony of Donald Williams, Roy Atha, Gary Routzahn, Therese Langen, Robin Nensley, and Gail Johnson as detailed above. Their testimony is in significant part mutually corroborative. Their testimony is also in significant part substantiated by admissions and acknowledgements of Respondent's witnesses. And, on this entire record, including the demeanor of the witnesses, they impressed me as reliable and trustworthy witnesses. On the other hand, Gordon Birdsall, Roger Crum, Jim Burgel, Kay Mammolite, Nancy Insley, and Hellen Cornell did not impress me as reliable or trustworthy witnesses. Their testimony was at times, as demonstrated above, vague, incomplete, contradictory and unclear. Thus, for example, I find incredible Birdsall's assertions to the effect that he told the Springfield office workers ''if you feel you want a Union to represent you that's fine'' or the Employer's related assertions to the effect that efforts were under way to give three office workers substantial hourly pay increases before the Union had attempted to organize them. I find instead, as discussed below, that the Employer, in an attempt to defeat the Union's organizational effort, threatened the office employees, granted a pay increase to three of them and then laid off Langen, a key union protagonist, as credibly related by Langen, Hensley, and Johnson. I also find, as discussed below, that the Employer, annoyed at the Union's insistence that the Employer comply with its local agreement with respect to decking only six trucks per man, bypassed the senior union representatives who came to the terminal to resolve this dispute, locked them out of the meeting where the Employer announced that it was agreeing with the Union's position and instead dealt with a rank-and-file worker and committeeman, as credibly related by Williams, Atha, and Routzahn.

Discussion

Section 7 of the National Labor Relations Act guarantees employees the ''right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection,'' as well as the right ''to refrain from any or all such activities.'' Section 8(a)(1) of the Act makes it an unfair labor practice for an employer ''to interfere with, restrain or coerce employees in the exercise of'' their Section 7 rights. Section 8(a)(3) forbids ''discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . .'' It is settled law that a ''grant or promise of benefits made during an organizational effort will be considered unlawful [in violation of Section 8(a)(1) of the Act] unless the employer can provide an explanation, other than organizational activities, for the timing of the grant or announcement of such benefits.'' See *Veteran's Thrift Stores*, 272 NLRB 572 (1983). In addition, it is equally settled that an employer runs afoul of the proscriptions of Section 8(a)(1) of the Act where he threatens employees with layoffs and more onerous working conditions if the employees select a union to represent them. See *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 616–620 (1969). And, an employer, under settled principles, violates Section 8(a)(3) of the Act by discriminatorily granting wage increases and laying off employees in an effort to discourage employees from supporting a union.

Applying these settled principles to the credited evidence of record, as recited supra, I find and conclude that Respondent Employer was strongly opposed to the Union's attempt to represent its ten office workers at Springfield and resorted to proscribed coercive conduct. Employee Hensley credibly recalled that Company Executive Vice President Birdsall admonished the assembled office employees shortly before the scheduled representation election, as follows:

> a labor Union would not be to our best interest . . . in the past we had not had to deal with being laid off during shutdowns or slowdowns . . . if we was to go to the Union, he would at that time have to start addressing layoffs . . . if we did go Union at least one or two jobs would be done away with because they would have to adjust for compensation that they would lose . . . he wanted us to take a look at the west coast because we had terminals out there that was unionized and they only had two girls to handle the same amount of drivers as what we had . . . and he also said that he wanted us to take into consideration that in the past we've always written in our time, kept our own time on time cards and we had not had to punch in and out on a time clock . . . if we went Union . . . we would have to go to using a time clock.

Employee Johnson credibly recalled that Birdsall warned the assembled office workers:

> if the office did go Union there would be layoffs . . . whereas in the past he had worked us during slow periods and shutdowns . . . he would have to lay off . . . .

And, employee Langen credibly recalled that Birdsall warned the assembled office workers that ''there would probably be layoffs . . . one to two girls most likely.''

I find and conclude that Management, by the foregoing statements, had threatened employees with layoff and more onerous working conditions if they selected the Union as their collective-bargaining agent, in violation of Section 8(a)(1) of the Act. Counsel for Respondent argues that management's statements were privileged speech under Section 8(c) of the Act (Br. p. 45). However, Birdsall's coercive statements, quoted above, cannot reasonably be regarded on this record as privileged speech under Section 8(c) or ''carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control . . . .'' See *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 616–620 (1969); *Overnite Transportation Co.*, 296 NLRB 669 (1989).

In addition, Respondent Employer, as part of this attempt to block its office workers from obtaining union representation, discriminatorily granted a pay increase during the Union's campaign. As employee Hensley credibly recalled, on Saturday, June 24, coworker Langen ''approached'' her at work and ''told [her] that they were signing [Union] cards in the back room.'' Hensley did not ''go back there'' because her previous manager, Gerald Winters, had warned her some time earlier that ''he didn't ever want to catch [her] discussing a Union again.'' Hensley instead ''reacted out offear'' on June 24 and ''informed'' Terminal Manager Burgel ''that there were Union cards . . . around'' and she ''did not want to get in trouble for it.'' She identified the employees involved to Burgel. Two days later, on Monday June 26, Hensley was summoned to a meeting with Manager Burgel and Company official Phippen in Burgel's office. All the office workers were ''called in one at a time'' to similar meetings. Phippen then stated to Hensley that ''going Union would not be a good idea''; that Hensley ''did a wonderful job''; and that Hensley would receive a pay raise of over $1 an hour. Phippen also stated that ''he appreciated [Hensley's] effort'' in informing on her coworkers' union activities. The last time Hensley had received a raise was in February 1989 for about $.30 an hour, and her last raise for over a dollar an hour was in 1984. Company Representative Birdsall acknowledged that two other office workers were also given raises at the same time.

Counsel for Respondent asserts that there was a ''commitment to give a raise [here] made well before the election campaign got under way'' (Br. p. 44). The credited evidence of record, detailed above, does not support this assertion. Instead, I find and conclude that Respondent discriminatorily granted a substantial pay raise in an effort to discourage employee support of the Union, in violation of Section 8(a)(3) and (1) of the Act.[3]

The Union won the Board-conducted representation election and certification issued on September 14. Then, on October 16, Terminal Manager Burgel suddenly laid off employee Langen because there assertedly ''was a slow down [in] productivity.'' I find and conclude on the credited evidence of record, detailed above, that Respondent, as part of its antiunion campaign, laid off employee Langen in retaliation for her known union efforts. Thus, employee Langen played a key role in the Union's organizational effort. Management became aware of Langen's prounion role when coworker Hensley informed on these protected union activities. Indeed, Birdsall, during his visit to Springfield, where he threatened employees with layoffs and more onerous working conditions if they voted for the Union, pointedly admonished Langen: ''[she] was stupid for signing a card.''

Respondent Employer, in the past, had not laid off its office personnel during the seasonal shutdowns or slowdowns in Navistar's or Harvester International's production. Birdsall, however, made clear to the office workers that

> if the office did go Union there would be layoffs . . . whereas in the past he had worked us during slow periods and shutdowns . . . he would have to lay off . . . in the past we had not had to deal with being laid off during shutdowns or slowdowns, . . . if we was to go to the Union he would at that time have to start addressing layoffs . . . .

Employee Langen, following certification, was then singled out for layoff. The remaining office workers continued working overtime. Langen even had worked overtime up to her sudden layoff. Management also continued to use ''temporary'' office personnel to do work which Langen appar-

[3] I find and conclude that the pay raise granted to 3 of the 10 employees clearly violated Sec. 8(a)(1) of the Act. I also find, in the case of employee Hensley, that the granting of her pay raise was discriminatorily motivated and further violated Sec. 8(a)(3) of the Act. It is unnecessary for me to determine here whether the pay raise similarly granted to two other office workers has also been shown by sufficient proofs to have been discriminatorily motivated. The remedy would, under the circumstances, be the same.

ently could have performed. Moreover, the Employer's records (R. Exh. 3) only show some 32 Kenosha drivers on layoff status during the week of Langen's layoff in October. These same weekly records for the preceding January show 66 and 90 drivers on layoff; 51, 103, and 70 drivers on layoff in July; 40 and 61 drivers on layoff in August; and 42 and 48 drivers on layoff in September. These and related records provide no credible justification for the Employer's sudden and unusual layoff of Langen on October 16.

I find and conclude that Management threatened its office employees with layoff during seasonal slowdowns and shutdowns if they voted for the Union and, following Board certification, made good on this threat by laying off known union protagonist Langen, in violation of Section 8(a)(3) and (1) of the Act. I reject Respondent's assertion that Langen was in fact laid off for economic reasons (Br. p. 50) as not supported by the credible evidence of record. Moreover, I would not find on this record that Langen would have, in any event, been laid off for lawful economic reasons regardless of her protected Union activities. As noted, in the past, the Employer did not lay off these office employees during such seasonal slowdowns or shutdowns.

General Counsel also alleges that Respondent Employer violated Section 8(a)(5) and (1) of the Act. Section 8(a)(5) makes it an unfair labor practice for an employer ''to refuse to bargain collectively with the representative of his employees.'' Section 8(d) of the Act explains:

> to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder . . . .

It is settled law that an employer runs afoul of the above statutory obligation where he bypasses a union which represents his employees and instead deals directly with the employees. See *Dallas & Mavis Forwarding Co.*, 291 NLRB 980 (1988) (involving a related employer and conduct of Birdsall). The gravamen of the violation is that such conduct ''tend[s] to undermine the position of the union'' and is ''subversive of the mode of collective bargaining . . . ordained'' by the Act. See *NLRB v. Goodyear Aerospace Corp.*, 497 F.2d 747, 752 (6th Cir. 1974), and cases cited.

In the instant case, Respondent Employer was attempting to violate its local agreement with the Union by requiring the unit employees to deck more than six trucks. Union Secretary-Treasurer Atha and Steward Williams went to the Employer's facility on July 6 to press their grievance and complaint for this contractual violation. Terminal Manager Burgel initially conferred with Atha and Williams at the facility in the downstairs break area. The meeting was then adjourned to Burgel's office. Burgel, however, instead of waiting for Atha and Williams to attend this continued meeting, instructed Williams that he could not enter his office, summoned a rank and file employee and committeeman to his office, locked out Atha and Williams from the office, ignored efforts by Atha and Williams to enter the office, and then negotiated and announced a settlement of this dispute to the rank and file employee and committeeman. Such conduct plainly tends to undercut and undermine the Union's representational status and violates the Employer's obligation to bargain in good faith, in violation of Section 8(a)(5) and (1) of the Act.[4]

CONCLUSIONS OF LAW

1. Respondent Employer is an employer engaged in commerce as alleged.
2. Charging Party Union is a labor organization as alleged.
3. Respondent Employer violated Section 8(a)(1) of the Act by threatening its office employees with layoff and more onerous working conditions if they selected the Union as their collective- bargaining agent and by granting its office workers a pay raise during the Union's organizational campaign.
4. Respondent Employer violated Section 8(a)(3) and (1) of the Act by discriminatorily granting a pay increase and laying off employee Therese Langen in an attempt to discourage employees from engaging in protected union activities.
5. Respondent Employer violated Section 8(a)(5) and (1) of the Act by bypassing the Union, the exclusive bargaining agent of an appropriate unit of its employees described below, and instead dealing directly with the unit employees, by refusing to allow a Union representative to be present during a discussion concerning the number of trucks which had to be loaded per day by the unit employees. The appropriate unit is:

> The employees of Respondent described in the National Master Automobile Transportation Agreement of 1988, including all drivers, yard employees, garage employees and mounting and hookup employees, but excluding all professional employees, guards and supervisors as defined in the Act.

6. The unfair labor practices found above affect commerce as alleged.

REMEDY

To remedy the unfair labor practices found above, Respondent Employer will be directed to cease and desist from engaging in such conduct and like or related conduct and to post the attached notice. Respondent Employer has been found to have violated Section 8(a)(3) of the Act by discriminatorily laying off employee Langen. Respondent Employer will therefore be directed to offer employee Langen immediate and full reinstatement to her former job or in the event her former job no longer exists to a substantially equivalent job without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings which she may have suffered by reason of her unlawful layoff by making payment to her of a sum of money equal to that which she normally would have earned from the date of Respondent's discrimination to the date of its offer of reinstatement, less net earnings during such pe-

[4] Counsel for Respondent argues that the 8(a)(5) allegations should be deferred to the contractual grievance-arbitration process (Br. p. 42). The Board, however, has made clear that ''it will not defer in cases where the employer's conduct arguably constitutes'' a ''rejection of the principles of collective bargaining.'' See *Dallas & Mavis Forwarding Co.*, 291 NLRB 980 (1988), and cases cited. Respondent Employer's conduct in the instant case arguably constitutes a rejection of the principles of collective bargaining.

riod, with backpay to be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 651 (1977), and interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962). Further, Respondent Employer will be directed to preserve and make available to the Board or its agents upon request all payroll records and reports and all other records necessary to determine backpay under the terms of this Decision and Order. And, Respondent Employer will also be directed to expunge from its files any reference to the discriminatory layoff of Langen found unlawful herein, in accordance with *Sterling Sugars*, 261 NLRB 472 (1982).

Respondent Employer has been found to have also violated Section 8(a)(5) of the Act by not bargaining in good faith with the Union. Respondent Employer will therefore be directed to upon request bargain in good faith with the Union as the exclusive bargaining agent of its employees in the appropriate unit and if an understanding is reached embody that understanding in a signed agreement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Kenosha Auto Transport Corporation, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening its office employees with layoff and more onerous working conditions if they selected the Union, General Teamsters, Sales & Services And Industrial Union, Local No. 654, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen And Helpers Of America, AFL–CIO, as their collective-bargaining agent and granting its office workers a pay raise during the Union's organizational campaign.

(b) Discriminatorily granting a pay increase and laying off employees in an attempt to discourage employees from engaging in protected union activities.

(c) Failing and refusing to bargain in good faith with the Union as the exclusive bargaining agent of its employees in the following appropriate unit by bypassing the Union and instead dealing directly with the unit employees, by refusing to allow a Union representative to be present during a discussion concerning the number of trucks which had to be loaded per day by the unit employees. The appropriate unit is:

> The employees of Respondent described in the National Master Automobile Transportation Agreement of 1988, including all drivers, yard employees, garage employees and mounting and hookup employees, but excluding all profes- sional employees, guards and supervisors as defined in the Act.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer employee Langen immediate and full reinstatement to her former job or, if that job no longer exists, to a substantially equivalent job without prejudice to her seniority or other rights and privileges, and make her whole for any loss of earnings which she may have suffered by reason of her unlawful layoff, with interest, as provided in this Decision.

(b) Preserve and, on, request make available to the Board or its agents for examination or copying all payroll records, social security payment records, timecards, personnel records and reports, as well as all other records necessary or useful in analyzing and computing the amount of backpay, as provided in this Decision.

(c) Expunge from its files any reference to the discriminatory layoff of employee Langen and notify her in writing that this has been done and that evidence of this unlawful action will not be used as a basis for future personnel action against her.

(d) Upon request bargain in good faith with the Union as the exclusive bargaining agent of its employees in the above appropriate unit and if an understanding is reached embody that understanding in a signed agreement.

(e) Post at its Springfield, Ohio facility copies of the attached notice marked ''Appendix.''[6] Copies of said notice, on forms provided by the Regional Director for Region 9, after being signed by Respondent's representative, shall be posted by Respondent immediately on receipt in conspicuous places, including all places where notices to employees are customarily posted, and be maintained for 60 consecutive days. Reasonable steps shall be taken to ensure that notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date hereof what steps have been taken to comply.

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''